

House File 634 - Introduced

HOUSE FILE 634

BY BOHANNAN

(COMPANION TO SF 205 BY
BOLKCOM)

A BILL FOR

1 An Act relating to wage payment collection issues arising
2 between employers and employees, providing penalties and
3 remedies, and including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

WAGE PAYMENT COLLECTION

Section 1. Section 91A.5, subsection 1, unnumbered paragraph 1, Code 2021, is amended to read as follows:

An employer shall have the burden to establish that a deduction from employee wages is lawful. An employer shall not withhold or divert any portion of an employee's wages unless:

Sec. 2. Section 91A.5, subsection 1, paragraph b, Code 2021, is amended to read as follows:

b. The employer ~~has~~ obtains advance written authorization from the employee to so deduct for any lawful purpose accruing to the benefit of the employee.

Sec. 3. Section 91A.6, subsection 1, Code 2021, is amended to read as follows:

1. An employer shall ~~after being notified by the commissioner pursuant to~~ subsection 2 do the following:

a. Notify its employees in writing at the time of hiring what wages and regular paydays are designated by the employer.

b. Notify its employees in writing whose wages are determined based on a task, piece, mile, or load basis about the method used to calculate wages and when the wages are earned by the employees.

~~b.~~ c. Notify, at least one pay period prior to the initiation of any changes, its employees of any changes in the arrangements specified in this subsection ~~1~~ that reduce wages or alter the regular paydays. The notice shall either be in writing or posted at a place where employee notices are routinely posted.

~~c.~~ d. Make available to its employees upon written request, a written statement enumerating employment agreements and policies with regard to vacation pay, sick leave, reimbursement for expenses, retirement benefits, severance pay, or other comparable matters with respect to wages. Notice of such availability shall be given to each employee in writing or by a notice posted at a place where employee notices are routinely

1 posted.

2 ~~d.~~ e. Establish, maintain, and preserve for three
3 calendar years the payroll records showing the hours worked,
4 wages earned, and deductions made for each employee and
5 any employment agreements entered into between an employer
6 and employee. Failure to do so shall raise a rebuttable
7 presumption that the employer did not pay the required minimum
8 wage under section 91D.1.

9 Sec. 4. Section 91A.6, subsection 2, Code 2021, is amended
10 by striking the subsection.

11 Sec. 5. Section 91A.6, subsection 4, Code 2021, is amended
12 by striking the subsection and inserting in lieu thereof the
13 following:

14 4. *a.* On each regular payday, the employer shall provide
15 to each employee a statement showing the wages earned by
16 the employee, the deductions made for the employee, and the
17 following information, as applicable:

18 (1) For each employee paid in whole or in part on an hourly
19 basis, the statement shall show the hours the employee worked.

20 (2) For each employee paid based on a percentage of sales or
21 based on a percentage of revenue generated for the employer,
22 the statement shall include a list of the amount of each sale
23 or the amount of revenue during the pay period.

24 (3) For each employee whose pay is based on the number
25 of miles or loads performed, the statement shall include the
26 applicable number performed during the pay period.

27 *b.* The employer shall provide the statement using one of the
28 following methods:

29 (1) Sending the statement to an employee by mail.

30 (2) Providing the statement to an employee by secure
31 electronic transmission or by other secure electronic means.
32 If an employee is unable to receive the statement by this
33 method, the employee shall notify the employer in writing at
34 least one pay period in advance, and the employer shall provide
35 the statement by one of the other methods listed in this

1 paragraph "b".

2 (3) Providing the statement to the employee at the
3 employee's normal place of employment during normal employment
4 hours.

5 (4) Providing each employee access to view a statement
6 of the employee's earnings electronically and providing the
7 employee free and unrestricted access to a printer to print the
8 statement.

9 Sec. 6. Section 91A.8, Code 2021, is amended to read as
10 follows:

11 **91A.8 Damages recoverable by an employee.**

12 When it has been shown that an employer has intentionally
13 failed to pay an employee wages or reimburse expenses pursuant
14 to [section 91A.3](#), whether as the result of a wage dispute or
15 otherwise, the employer shall be liable to the employee for
16 ~~any the unpaid wages or unreimbursed expenses that are so~~
17 ~~intentionally failed to be paid or reimbursed~~, plus liquidated
18 damages, court costs, and any ~~attorney's attorney~~ fees incurred
19 in recovering the unpaid wages or unreimbursed expenses
20 and determined to have been usual and necessary. ~~In other~~
21 ~~instances the employer shall be liable only for unpaid wages or~~
22 ~~expenses, court costs and usual and necessary attorney's fees~~
23 ~~incurred in recovering the unpaid wages or expenses.~~

24 Sec. 7. Section 91A.9, subsection 3, Code 2021, is amended
25 to read as follows:

26 3. The commissioner may employ such qualified personnel
27 as are necessary for the enforcement of [this chapter](#). Such
28 personnel shall be employed pursuant to chapter 8A, subchapter
29 IV. The commissioner shall employ wage investigators for the
30 enforcement of this chapter.

31 Sec. 8. Section 91A.9, Code 2021, is amended by adding the
32 following new subsection:

33 NEW SUBSECTION. 4A. The commissioner shall establish a
34 statewide, toll-free telephone hotline for the purpose of
35 receiving reports of violations of this chapter.

1 Sec. 9. Section 91A.10, subsection 5, Code 2021, is amended
2 to read as follows:

3 ~~5. An employer shall not discharge or in any other manner~~
4 ~~discriminate against any employee because the employee has~~
5 ~~filed a complaint, assigned a claim, or brought an action under~~
6 ~~this section~~ or has cooperated in bringing any action against
7 an employer.

8 a. An employer or other person shall not discharge or in
9 any other manner discriminate or retaliate against any of the
10 following:

11 (1) An employee or other person for exercising any right
12 provided under this chapter or any rules adopted pursuant to
13 this chapter.

14 (2) Another employee or person for providing assistance to
15 an employee or providing information regarding the employee or
16 person.

17 (3) Another employee or person for testifying or planning
18 to testify in any investigation or proceeding regarding the
19 employee or person.

20 b. Taking adverse action against an employee or other person
21 within ninety days of an employee's or other person's engaging
22 in any of the activities in paragraph "a" raises a presumption
23 that such action was retaliation, which may be rebutted by
24 evidence that such action was taken for other permissible
25 reasons.

26 c. Any employee may file a complaint with the commissioner
27 alleging discharge, or discrimination, or retaliation within
28 thirty days after such violation occurs. Upon receipt of the
29 complaint, the commissioner shall cause an investigation to be
30 made to the extent deemed appropriate. If the commissioner
31 determines from the investigation that the provisions of this
32 subsection have been violated, the commissioner shall bring
33 an action in the appropriate district court against such
34 person. The district court shall have jurisdiction, for cause
35 shown, to restrain violations of this subsection and order all

1 appropriate relief including rehiring or reinstatement of the
2 employee to the former position with back pay.

3 Sec. 10. Section 91A.10, Code 2021, is amended by adding the
4 following new subsection:

5 NEW SUBSECTION. 6. A civil action to enforce subsection 5
6 may also be maintained in any court of competent jurisdiction
7 by the commissioner or by any party injured by a violation
8 of subsection 5. An employer or other person who retaliates
9 against an employee or other person in violation of subsection
10 5 shall be required to pay the employee or other person
11 an amount set by the commissioner or a court sufficient to
12 compensate the employee or other person and to deter future
13 violations, but not less than one hundred fifty dollars for
14 each day that the violation occurred.

15 Sec. 11. NEW SECTION. 91A.12A **Erroneous violations.**

16 If an employer erroneously violates the provisions of this
17 chapter or the rules adopted pursuant to this chapter, the
18 employer shall not be subject to liability to an employee
19 pursuant to section 91A.8, the violation shall not constitute
20 an enforceable claim as provided in section 91A.10, and the
21 employer shall not be subject to a civil money penalty pursuant
22 to section 91A.12, if all of the following conditions are met:

23 a. The commissioner determines that the violation was
24 erroneous and that the employer attempted in good faith to
25 comply with the provisions of this chapter and the rules
26 adopted pursuant to this chapter.

27 b. The commissioner, after considering any history of
28 violations of this chapter or the rules adopted pursuant to
29 this chapter by the employer, determines that the violation was
30 isolated in nature.

31 c. The employer corrects the violation to the satisfaction
32 of the labor commissioner within fourteen days of the
33 occurrence of the violation.

34 Sec. 12. NEW SECTION. 91A.16 **Commissions earned date.**

35 An employer shall not require that a person be a current

1 employee to be paid a commission that the person otherwise
2 earned.

3 Sec. 13. NEW SECTION. 91A.17 Inconsistency with federal
4 law.

5 A provision of this chapter shall not apply to any employer
6 or employee if such provision would conflict with federal law
7 or regulation.

8 Sec. 14. EFFECTIVE DATE. This division of this Act takes
9 effect January 1, 2022.

10 DIVISION II

11 NOTIFICATION REQUIREMENTS

12 Sec. 15. NOTIFICATION REQUIREMENTS. The labor commissioner
13 shall provide for the notification of each employer in this
14 state of the requirements for employers provided in this Act by
15 September 1, 2021. Such notification shall include suggested
16 forms and procedures that employers may use for purposes of
17 compliance with the notice and recordkeeping requirements of
18 section 91A.6, as amended by this Act.

19 EXPLANATION

20 The inclusion of this explanation does not constitute agreement with
21 the explanation's substance by the members of the general assembly.

22 This bill relates to the collection of wages from employers
23 by employees under Code chapter 91A, the "Iowa Wage Payment
24 Collection Law".

25 The bill provides that an employer has the burden to
26 establish that a deduction from employees' wages is lawful and
27 that the employer must obtain written authorization for the
28 deduction from the employee in advance.

29 The bill removes the requirement that an employer be
30 notified by the division of labor services of the department
31 of workforce development before the employer is required to
32 fulfill requirements relating to employee wage and benefit
33 information. The bill requires an employer to notify employees
34 in writing whose wages are determined based on a task, piece,
35 mile, or load basis about the method used to calculate wages

1 and when wages are earned. The bill establishes a rebuttable
2 presumption that an employer did not pay the minimum wage if
3 the employer does not maintain proper payroll records.

4 The bill requires an employer to provide to each employee
5 a statement of the employee's earnings, deductions made, and
6 as applicable the following: for an employee paid hourly, the
7 number of hours worked during the pay period; for an employee
8 paid on a percentage of sales or revenue generated, a list of
9 sales or amount of revenue during the pay period; and for an
10 employee paid based on the number of miles or loads performed,
11 the applicable number performed during the pay period.

12 The bill provides that when any specified violation of Code
13 chapter 91A occurs, even if unintentional, an employer shall be
14 liable for unpaid wages or expenses plus liquidated damages,
15 court costs, and attorney fees incurred in recovering wages.

16 The bill requires the labor commissioner to employ wage
17 investigators for the enforcement of Code chapter 91A, and to
18 establish a statewide, toll-free telephone hotline for the
19 purpose of receiving reports of violations of Code chapter 91A.

20 Prohibitions on retaliatory actions by employers or
21 others are expanded to cover persons other than employees who
22 act under Code chapter 91A with respect to an employee. A
23 90-day period is established during which any action against
24 an employee or other person is rebuttably presumed to be
25 retaliatory. The bill allows the labor commissioner or any
26 injured party to maintain a civil action in any court of proper
27 jurisdiction. An employer who retaliates against an employee
28 or other person shall compensate the injured party an amount
29 set by the labor commissioner or the court, but not less than
30 \$150 for each day of the violation.

31 The bill provides that if an employer erroneously violates
32 the provisions of Code chapter 91A or the rules adopted
33 pursuant to Code chapter 91A, the employer shall not be subject
34 to certain penalty provisions provided in Code chapter 91A if
35 certain conditions are met. The first condition is that the

1 labor commissioner determines that the violation was erroneous
2 and that the employer attempted in good faith to comply with
3 the provisions of Code chapter 91A and the rules adopted
4 pursuant to Code chapter 91A. The second condition is that the
5 commissioner, after considering any history of violations by
6 the employer, determines that the violation was isolated in
7 nature. The third condition is that the employer corrects the
8 violation to the satisfaction of the commissioner within 14
9 days of the occurrence of the violation.

10 The bill prohibits an employer from requiring that
11 an individual be a current employee to be paid an earned
12 commission.

13 The bill stipulates that a provision of Code chapter 91A
14 shall not apply to any employer or employee if such provision
15 would conflict with federal law or regulation.

16 The bill requires the labor commissioner to provide for the
17 notification of each employer in Iowa of the requirements for
18 employers provided in the bill by September 1, 2021. Such
19 notification shall include suggested forms and procedures that
20 employers may use for purposes of compliance with the notice
21 and recordkeeping requirements of Code chapter 91A as amended
22 by the bill.

23 An employer who violates Code chapter 91A is subject to a
24 civil penalty of not more than \$500 per pay period for each
25 violation.

26 The bill, except for the provision providing for
27 notification of employees in Iowa by the labor commissioner,
28 takes effect January 1, 2022.